

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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STEVEN BAGGATA,

Plaintiff,

Index No. 07 CIV. 3544 WP4 (LS)

- against -

**ANSWER**

BOYCE EXCAVATING CO., INC.,

Defendant.  
-----X

Defendant BOYCE EXCAVATING CO., INC., by its attorneys, Blustein, Shapiro & Rich, LLP, as and for their Answer to the Complaint, alleges as follows:

1. Defendant denies the allegations contained in paragraphs 9, 14, 15, 16, 17, 19 and 20 of the Complaint.
2. Defendant admits the allegations contained in paragraph 3 of the Complaint.
3. Defendant denies knowledge or information sufficient to form a belief as to the allegations contained in paragraphs 2, 8, 11, 12 and 13 of the Complaint.
4. As to the allegations contained in paragraphs 1, 4, 5, 6 and 7 of the Complaint, defendant alleges that the Complaint is the best evidence of the nature of plaintiff's action, and defendant respectfully defers to the determination of the Court the meaning and effect of said documents; to the

extent that there are any factual allegations contained within paragraph 1 of the Complaint, defendant denies the truth of the same.

5. As to the allegations contained in paragraph 10 of the Complaint, defendant alleges that the plaintiff's employment application is the best evidence of the contents thereof, and defendant respectfully defers to the determination of the Court the meaning and effect of said document; to the extent that there are any factual allegations contained within paragraph 10 of the Complaint, defendant denies the truth of the same.

6. Defendant denies each and every allegation of fact set forth in the Complaint that was not hereinbefore specifically admitted or denied.

**AS AND FOR A FIRST AFFIRMATIVE DEFENSE**

7. The Complaint fails, in whole or in part, to state a claim upon which relief can be granted.

**AS AND FOR A SECOND AFFIRMATIVE DEFENSE**

8. Plaintiff's own culpable conduct caused, in whole or in part, whatever damages plaintiff claims to have suffered.

**AS AND FOR A THIRD AFFIRMATIVE DEFENSE**

9. Plaintiff's claims are barred, in whole or in part, because he received full payment for all work he performed.

**AS AND FOR A FOURTH AFFIRMATIVE DEFENSE**

10. Plaintiff is not entitled to liquidated damages in that he can neither demonstrate malice, actual participation or reckless indifference by defendant.

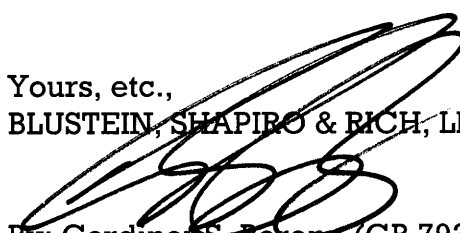
**AS AND FOR A FIFTH AFFIRMATIVE DEFENSE**

11. Plaintiff's claims are barred, in whole or in part, by the doctrines of estoppel and/or laches.

WHEREFORE defendant BOYCE prays that the Court enter a judgment dismissing the Complaint, and granting defendant its costs, including attorneys fees, incurred in this action, together with such other and further relief as the Court may deem just and proper.

Dated: Middletown, New York  
June 7, 2007

Yours, etc.,  
BLUSTEIN, SHAPIRO & RICH, LLP



By: Gardiner S. Barone (GB 7938)  
Attorneys for Defendant  
90 Crystal Run Road, Suite 409  
Middletown, New York 10941  
(845) 692-0011

To: Bergstein & Ullrich, LLP  
Attorneys for Plaintiff  
15 Railroad Avenue  
Chester, New York 10918

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BLUSTEIN, SHAPIRO & RICH, LLP  
Attorneys for Plaintiff  
90 Crystal Run Road, Suite 409  
Middletown, New York 10941  
(845) 692-0011

STATE OF NEW YORK )  
 ) ss.:  
COUNTY OF ORANGE )

Francesca Riccio, being duly sworn, deposes and says:

That I am not a party to the within action, am over the age of 18 years and reside at Middletown, New York.

That on the 8<sup>th</sup> day of June, 2007, deponent served a copy of the ANSWER in the following manner:

By mailing the same in a sealed envelope, with postage prepaid thereon, in official depository of the U.S. Postal Service within the State of New York addressed to the last known address of the addressee as follows:

Stephen Bergstein, Esq.  
Bergstein & Ullrich, LLP  
Fifteen Railroad Ave  
Chester, New York 10918



Francesca Riccio

Sworn to before me this  
8<sup>th</sup> day of June, 2007



Notary Public

AMANDA L. SINROD  
NOTARY PUBLIC, STATE OF NEW YORK  
NO. 01816135354  
QUALIFIED IN ORANGE COUNTY  
COMMISSION EXPIRES OCTOBER 17, 2009